PSE PUGET SOUND ENERGY

Richard R. Sonstelie
Chairman
Chief Executive Officer

May 16, 1997

The Honorable John D. Dingell
Ranking Member
Commerce Committee Democratic Office
564 Ford House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Dingell:

Puget Sound Energy, Inc. (formerly Puget Sound Power & Light Company) very much appreciated receiving your April 10 letter inviting our comments on various electric industry restructuring issues.

Puget Sound Energy, Inc. ("PSE") was created earlier this year when Puget Sound Power & Light Company and Washington Energy Company merged. We serve approximately 859,000 electric customers and 504,000 gas customers in western Washington. Our replies to your questions are attached.

I note that one of your questions regards "securitization." PSE pioneered the use of securitization in state legislation passed in 1994 providing for the recovery of state-mandated conservation costs. Although various forms of securitization are now being considered in numerous states, we were informed recently by Curtis S. Probst of Salomon Brothers that PSE still is the only utility to have actually completed such a securitization. We would be delighted to share with you or your staff what we have learned about securitization if that would be helpful. Mike Steward in our Washington, D.C. office (202/783-0791) would be happy to arrange for those at PSE with expertise in this matter to meet with your staff.

Thank you for your decades of attention to the nation's electricity system and for this opportunity to share our thoughts with you and your staff.

Sincerely,

R.R. Sonstelie
Chairman & C.E.O.

Enclosure: (1)
cc: Hon. Rick White w/enclosure
Hon. Slade Gorton w/enclosure

Replies of Puget Sound Energy, Inc. (formerly Puget Sound Power & Light Company) to Congressman Dingell's letter of April 10, 1997.

1. From your company's point of view, is it necessary for Congress to enact legislation bearing on retail competition, and why? If you favor legislation, please outline which issues should be addressed and how you think they should be resolved.

The flow of electricity across state boundaries is so great that there is a compelling argument that Congress is the appropriate legislative body to decide whether and how retail electricity sales should be competitive. If it should decide to enact such legislation, then Congress should also establish terms and conditions that will apply nationally. In our response to the next question, we elaborate in more detail on certain basic principles we believe must be honored by any retail competition legislation whether it is enacted by Congress or a state.

There are several existing federal laws that are fundamentally at odds with the competitive *wholesale* electricity marketplace Congress sought to nurture with the National Energy Policy Act of 1992. These old federal statutes need to be repealed or amended now to achieve consistency with wholesale competition. Obviously, only Congress can make those changes, and we believe it is essential that Congress move forward *now* to make those changes, i.e., these changes should not be deferred until Congress decides what action to take with respect to retail competition. Among the federal laws in this category (discussed in more detail in our reply to question 6), are those that provide subsidies and other special advantages for government-owned and cooperatively-owned utilities. Also in this category is section 210 of the Public Utility Regulatory Policies Act (PURPA).

As then FERC Chair Moler told the Senate Energy Committee on March 20 of this year, PURPA was "(e)nacted almost 20 years ago to deal with an electric power industry that no longer exists" and "has outlived its usefulness." Congress should enact Representative Stearns' H.R. 338 which would repeal PURPA 210 prospectively and at the same time ensure full utility recovery of costs associated with existing contracts with PURPA Qualifying Facilities ("QF").

For several reasons, Congress has a particular responsibility to ensure that utilities recover any above-market costs of their contracts with QFs. First, those costs cannot in any way be attributed to bad business decisions by utilities. PURPA and the federal regulations implementing it do not give utility management the discretion to decide whether or not to buy QF electricity or to negotiate the price or duration of QF contracts. Second, because purchased power is not included in the rate base upon which regulated utilities earn a return for their shareholders, the QF contracts have never offered those shareholders a profit opportunity. For those reasons, it would be wholly unfair to saddle utility shareholders with above-market QF costs. Indeed, to do so would amount to the federal government's unconstitutionally confiscating private property (shareholder value) without just compensation. Congress created PURPA and has a corresponding obligation to fairly resolve the problems it has created in the already-competitive wholesale marketplace.

2. If the state(s) you serve has adopted or is considering adopting retail competition, what are your biggest concerns? Please be specific. Indicate how you are dealing with them and any recommendations you may have.

Earlier this year, relevant committees of the Washington State Legislature considered retail competition legislation. However, no legislation was enacted, and the Legislature is now adjourned. In discussions with state legislators, Puget raised a number of concerns regarding the proposed legislation and set forth four principles as the basis for legislation that would be fair and constitutional:

a. Require just compensation for taking apart Puget's integrated, networked system, and require fair market value for use by competitors of Puget's property, including severance costs.

b. Level the playing field so that government-owned utilities, self-generators, and out-of-state entities do not have unequal advantages in areas such as regulatory burdens, taxes, preferences and subsidies.

c. Provide for securitization by bonds of past costs imposed by government mandates, such as "duty to serve" and PURPA.

d. Clearly provide for equal rights for Puget to sell its power (currently tied to its integrated system) to anyone in interstate commerce.

The following sections provide additional detail on each of those four principles. We would be pleased to submit further comments in each area at your request.

a. Require just compensation for taking apart Puget's integrated, networked system, and require fair market value for use by competitors of Puget's property, including severance costs.

Most proposed retail competition legislation would take apart the integrated networks of existing utilities and treat the newly separated parts in different and inequitable ways. The process of disintegration, called unbundling, raises significant economic and constitutional concerns.

Under long-standing state and federal laws, Puget designed, financed and constructed an integrated network system of generation, transmission and distribution in order to meet its statutorily imposed duty to serve all customers. On an integrated basis, Puget's system is competitive. To the extent Puget has generation costs that are above replacement or market (mostly due to federally mandated PURPA contracts), those costs are more than offset by the fact that the market value of Puget's transmission and distribution property is much higher than Puget is allowed to charge in bundled rate tariffs. State legislation that takes apart Puget's integrated system and requires generation to be sold at fair market value must also allow transmission and distribution services to be sold at fair market value. Any other method would be an unconstitutional taking of private property without just compensation in order to unfairly subsidize competitors.

In the August/September 1996 issue of Electricity Journal, John Rowe and Paige Graening of the New England Electric System summarized this issue:

> [Competitors of existing utilities] urge regulators to allow them to use utility wires for mere embedded costs. They ignore the fact that the wires interconnect generation (including utility-owned units and power purchased from others) with franchised customers to create an integrated property. This piracy will, of course, strand utility investments in generation units and purchased power contracts. Indeed, that is its intent.
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> The Takings Clause of the Fifth Amendment to the U.S. Constitution prevents such destruction of private property rights and values without just compensation to the property owner. Rules that force utilities to yield their wires to third parties will result in a taking because they will destroy the integrated nature of utility property and the value inherent in the enterprise as a whole.

* * *

> The unitary nature of vertically integrated utility holdings drives the determination of damages resulting from a physical taking. The integration of distribution, transmission and generation into a tightly woven commodity delivery system performs as a whole. One part severed from the others can drastically reduce the property's comprehensive value. If the wires are severed from the generation, their loss will destabilize the value of the overall property. The result would be akin to a tricycle with only two wheels—broken and going nowhere.

If the government condemned the integrated electrical system of a utility, it would have to pay fair market value for both generation and distribution facilities, and it would also have to pay severance damages for any portion of the existing system rendered uneconomic. United States v. Powelson, 319 U.S. 266, 275 (1943); United States v. Miller, 317 U.S. 369, 374 (1943). The legislation proposed in Washington State would have achieved the effect of a condemnation by forcing Puget to allow competitors to use its private utility property, but at less than fair market value.

The U.S. Supreme Court has repeatedly recognized that public utility shareholders are protected by the Fifth Amendment of the U.S. Constitution which prohibits the government from taking private property "for public use, without just compensation." The application of this principle to regulated entities was recognized by the Supreme Court as early as Stone v. Farmers Loan & Trust Co., 116 U.S. 307, 331 (1886), in which the Court observed that:

> This power to regulate is not a power to destroy . . . . Under pretense of regulating fares and freights, the State cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation, or without due process of law.

Although devoted to a public purpose, a regulated utility's assets remain private property, subject to constitutional protection, as the U.S. Supreme Court recognized in United Rys. & Electric Co. of Baltimore v. West, 280 U.S. 234, 249 (1930):

> [T]he fundamental principle to be observed is that the property of a public utility, although devoted to the public service and impressed with a public interest, is still private property; and neither the corpus of that property nor the use thereof constitutionally can be taken for a compulsory price which falls

> below the measure of just compensation. One confiscation is no less than the other.

In the leading case of Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944), the U.S. Supreme Court said utility investors are entitled to a fair return on investment equal to the return of companies with similar risks:

> [T]he investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. *By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks.* That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

(Citation omitted) (emphasis added); accord Duquesne Light Co. v. Barasch, 488 U.S. 299, 310 (1989). In the Hope case the Court also established the end result test:

> *[I]t is the result reached not the method employed which is controlling.* It is not theory but the *impact* of the rate order which counts. If the *total effect* of the rate order cannot be said to be unjust and unreasonable, judicial inquiry . . . is at an end. The fact that the method employed to reach that result may contain infirmities is not then important.

320 U.S. at 602 (citation omitted) (emphasis added); accord Duquesne, 488 U.S. at 310.

In Duquesne, the Court explained that the constitutional protection for regulated utilities is unique:

> Although their assets are employed in the public interest to provide consumers of the State with electric power, they are owned and operated by private investors. This partly public, partly private status of utility property creates its own set of questions under the Takings Clause of the Fifth Amendment.

488 U.S. at 307.

From long-standing experience with arbitrary government actions, the property rights of utilities are accorded special vigilance from the courts.

> Utilities are so vulnerable to arbitrary action of government, and the service utilities provide is so critical to the functioning of society as a whole, the courts have enforced a constitutional requirement designed to prevent confiscation of utility investment.

Richard McKenna, The Special Constitutional Status of Public Utility Regulation: From Munn to Duquesne Light, 21 UWLA L. Rev. 31, 32 (1990) (footnote omitted).

In particular, the U.S. Supreme Court has made it clear that if the government switches rate methods back and forth, it raises a "serious constitutional question." Any proposed legislation that would treat one set of assets (generation) at fair market value and another set of assets (transmission or distribution) at historic cost would not be constitutional. For Puget the switch results in a confiscation by setting rates at the lower of cost or market. This type of action was condemned in Duquesne:

> [A] State's decision to arbitrarily switch back and forth between methodologies in a way which required investors to bear the risk of bad investments at some times while denying them the benefit of good investments at others would raise serious constitutional questions.

488 U.S. at 315.

In summary, the proposed legislation in Washington State would have taken apart Puget's integrated, network system and treated the parties on an inconsistent and unfair basis. Currently, both generation and distribution wires are regulated on a historic embedded-cost basis. The proposed legislation would switch to treating generation at a new fair market value, but treating transmission and distribution at an old historic cost. Because the fair market value of most generation has gone down recently, while the cost of replacing or adding transmission has gone up, such legislation would provide the lower of cost or market. This would be an unconstitutional switching of methods to produce a confiscation of utility property in order to subsidize competitors and others.

In order to avoid such a result, if private generation is to be regulated at fair market value, so too must private transmission and distribution property.

b. *Level the playing field so that government-owned utilities, self-generators, and out-of-state entities do not have unequal advantages in areas such as regulatory burdens, taxes, preferences and subsidies.*

One question state legislation will have to address is whether it is appropriate for the government to compete with private business. Either there is a truly competitive market place in which there are no special government privileges or there is not. Government-owned business ventures in the United States are acceptable only if there is no alternative. Today government-owned electric utilities pay no federal corporate income taxes and pay far fewer taxes, fees and licenses than businesses not owned by the government. In 1995, regular business-owned utilities paid nearly $10 billion in federal income taxes, an effective rate of 25.8 percent. In contrast, government-owned and cooperative utilities paid no federal income tax. Government-owned electric utilities have special preferences such as access to federally subsidized hydropower. Government owned utilities can borrow merely using tax exempt bonds which substantially reduce the cost of what is the most capital intensive industry in the United States.

In order for there to be fair and efficient competition, there must be a level playing field. (See Puget's more detailed response to the question directed to this issue.)

c. *Provide for securitization by bonds of past costs imposed by government mandates, such as "duty to serve" and PURPA.*

Over several decades of legislation and regulation, existing utilities have had to meet government-imposed mandates that have, for the most part, increased their costs above what an unregulated business would have voluntarily incurred. The statutory duty to serve required service to marginally profitable customers that an unregulated business would have refused to serve. Special state laws on low income customers and conservation measures have also raised costs beyond what an unregulated business would have chosen to incur.

In 1978 Congress imposed PURPA-mandated long-term power contracts on utilities that unregulated businesses would not have voluntarily made. Resource Data International estimates PURPA-related above-market costs alone to be $42 billion in the United States. (Also see Puget's discussion of recovery of existing PURPA costs at pages 1-2.)

These government-imposed costs that unregulated businesses would not have incurred are referred to by some as "stranded costs" or "stranded investments."

In testimony last year before Congress, J. Gregory Sidak summarized the situation facing existing utilities:

> Electric utilities have made enormous investments in long-lived, unsalvageable facilities and other specialized assets. These were made to fulfill service obligations that those firms accepted in return for the regulators' assurance that the utilities—by charging reasonable, regulated rates—would earn a competitive return on invested capital. The companies were also entitled to compensation for the full cost of providing service, including recovery of capital.
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> *   *   *
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> The desire of certain power customers to be sheltered from the costs of past commitments that have not met expectations is understandable. But the offer of such shelter by regulators or legislators will produce for utilities a game of heads-we-win, tails-you-lose. A failure now by policy makers to permit recovery of costs imposed under regulation in any transition to competition would leave investors with much of their equity expropriated by the change in the rules of the game.

(Testimony of J. Gregory Sidak, March 28, 1996, before the Subcommittee on Energy and Power, Committee on Commerce, U.S. House of Representatives)

When the federal government (through the FERC) ordered wholesale transmission access, it recognized that stranded costs must be recovered:

> We believe it only appropriate that the departing customer, and not the remaining customers (or shareholders), bear its fair share of the legitimate and prudent obligations that the utility undertook on that customer's behalf. . . .
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> [A]llowing direct assignment of stranded costs will ensure that there are no stranded costs left to be borne by the remaining customer base or by the shareholders. This, in turn, will ensure that the financial health of the industry is not placed in jeopardy. If some customers are permitted to leave their suppliers without paying for costs incurred to serve them, this may cause an excessive burden on the remaining customers (such as residentials) who cannot leave and therefore may have to bear

> those costs. Moreover, the prospect or lack thereof for recovering such costs from ratepayers could erode a utility's access to capital markets or significantly increase the utility's cost of capital. This higher cost of capital could precipitate other customers leaving the system which, in turn, could cause others to leave. Such a spiral could be difficult to stop once begun.

60 Fed. Reg. at 17,697 (1995). The Commission acknowledged the legal obligation to ensure the recovery of stranded costs:

> "[w]e continue to be of the opinion that utilities are entitled, from both a legal and policy perspective, to an opportunity to recover their past prudently incurred costs . . . ."

Thus, the only legitimate question at the state or federal level is how to provide for the recovery of these past costs imposed by the state statutory duty to serve obligation and by federal laws such as PURPA mandating the purchase of expensive power from third parties.

It is Puget's view that securitization of these costs by bonds is an appropriate method by which to mitigate and recover those costs. Puget pioneered the use of securitization in state legislation which provided for the recovery of state-mandated conservation costs. (Also see Puget's response to question 3.)

d. Clearly provide for equal rights for Puget to sell its power (currently tied to its integrated system) to anyone in interstate commerce.

If, under state legislation, non-traditional sellers of electricity can buy and sell power without a duty to serve all customers in a specific geographic area, then existing utilities such as Puget should be freed of restrictions on where it may buy and sell its power. In other words, if Puget has generation resources that over time become below market, Puget should not be forced to sell that power at cost to existing customers. The duty to serve must be explicitly modified to make it clear that service will no longer be deemed to come at the lower of cost or market. Puget should be permitted on an equal basis with power markets to move low cost power to markets where it can achieve the highest prices for its power.

3. Whether or not you favor federal legislation, please indicate your position on the following specific issues (to the extent not addressed in your prior responses).

"Securitization" and reciprocity conditions in state retail competition legislation appear to be the only matters raised in subparts a, b and c of this question that our other responses don't address fully.

If done properly, securitization can ease the burden on a utility's customers of providing for that utility's full recovery of its non-mitigable stranded costs. As noted in the cover letter to Representative Dingell, Puget has particular experience with securitization and would be happy to provide additional information if that would be helpful. (Also see our response to question 2.)

With respect to reciprocity conditions, we believe a state allowing retail competition should be able as a matter of policy to bar participation by entities from other states that do not allow retail competition. But as a practical matter such a bar likely will be subject to constitutional challenge under the Commerce Clause and, in any event, could be circumvented easily. For example, out-of-state corporations, and particularly those that are not regulated utilities, could evade the full jurisdiction of the regulators in the retail competition state. The foregoing underscores, we believe, why it is essential that Congress decide whether to implement retail competition and that it set uniform national terms and conditions if it decides to establish such competition.

Question 3(c) asks whether Congress' enacting a reciprocity requirement could create an incentive for states with low electric rates not to adopt retail competition in order to keep cheap power at home. As a practical matter, we believe that with or without "reciprocity" rules governing participation of entities in open retail markets, officials in states having low-cost electricity have an understandable incentive to keep that low-cost electricity at home.

4. If Congress enacts comprehensive restructuring legislation, should it mandate "unbundling" of local distribution company services? What effects would this have, and would they differ for various customer classes? Would this entail substantial expense, and who would incur any such costs?

See our response to question 2 where we discuss the very fundamental constitutional and economic issues raised by "unbundling."

5. Recently Chair Moler of the Federal Energy Regulatory Commission recommended that, as part of comprehensive legislation, Congress authorize the Commission to enforce compliance with North American Electric Reliability Council standards to help maintain reliability of service. Do you believe this is necessary, and why or why not?

We have reached no final conclusion. Our thinking certainly will be much influenced by the analysis and recommendations of FERC and the Western Systems Coordinating Council. If FERC is given additional authority, we think that authority should extend equally to all transmitting entities including the federal power marketing administrations and other government-owned utilities.

Fundamentally, however, the industry's collective ability to maintain and improve system reliability will rest on whether there is the economic capability and incentive to do so. If, for example, today's utility shareholders are treated unfairly with respect to "stranded costs," then investors will be put on notice that investing in utility facilities is a risky proposition. That will affect the cost of capital for transmission (as well as other utility facilities) adversely and to the detriment of reliability.

6. What concerns does your company have with respect to the role of public power and federal power marketing agencies in an increasingly competitive wholesale electric market? In markets in which retail competition has been adopted? Are there concerns you would like to have addressed if Congress enacts comprehensive restructuring legislation? Should Congress consider changes to federal law as it applies to regulation of public or federal power's transmission obligations?

Whether Congress enacts national legislation requiring retail competition or leaves it to each state to decide on retail competition, Congress should act now to eliminate the federal laws that give government-owned and cooperatively-owned utilities special advantages.

Sparse electric service in rural areas and the desire for a "yardstick" against which to measure the performance of then-unregulated monopoly private utilities were the conditions that gave rise to those federal laws. But those conditions have long since disappeared. Rural America is fully electrified, i.e., the expensive-to-build rural transmission and distribution systems are in place. Every state now has a commission that regulates investor-owned utilities' retail rates while the Federal Energy Regulatory Commission regulates our wholesale power sales and our transmission rates. There are two additional reasons why Congress should repeal those old federal laws. First, the public policy decision to shift to competitive wholesale and (ultimately) retail electricity markets rests upon a determination that competing suppliers will best satisfy the needs of consumers, i.e. that the government need no longer maintain regulated monopoly suppliers or be a supplier itself in order to assure electricity for consumers. Second, competition in electricity products, just as in other products from corn flakes to autos, will serve consumers only if suppliers win sales because of their superior performance -- and not because they enjoy special government-conferred advantages. After all, when government-owned or government-favored suppliers win sales they reduce sales by more efficient suppliers. The result is greater use of society's limited resources to produce fewer goods and services for consumers.

In short, there is a profound conflict between the obsolete federal laws that confer special advantages on government-owned and cooperatively-owned utilities and new public policies requiring or promoting competitive electricity markets. They cannot co-exist. Congress needs to confront this reality and change federal statutes accordingly.

For example, the federal government continues to sell its hydropower "at cost" to government-owned and cooperatively-owned utilities that serve a minority of the populations in regions where there are federal hydroelectric projects. The difference between the higher market value of that power and its cost benefits the few citizens that happen to be served by those particular utilities, i.e., the entire difference is passed on to them in lower electric rates. They enjoy that benefit no matter how wealthy they may be or how large their businesses are. Meanwhile, other citizens in the same regions, including the poor, are generally denied that benefit. There are very good reasons why the benefits of the federal hydropower should remain in the regions where it is generated. However, those benefits should be distributed fairly among all citizens within those regions. If the law were changed such that the federal government auctioned its hydropower on the open market, the dollar difference between the power's cost and its higher market value could be distributed to the states in those regions for education, environmental mitigation and other programs that would broadly benefit all their citizens. Furthermore, government-owned and cooperatively-owned utilities, marketers and aggregators would no longer have preferential access to the low-cost federal hydropower to use to compete against investor-owned utilities, marketers and aggregators for sales. Performance, rather than government-conferred privilege, would determine the outcome of the competition as it must if competition is to produce real consumer benefits.

Federal tax code provisions that permit municipal utilities and public utility districts (as well as "two county" investor-owned utilities) to sell tax-exempt bonds should be repealed. There is no reason for the federal government to continue giving tax breaks to those in high tax brackets to entice them to lend additional money at low interest rates to municipal utilities and PUDs. At the very least, Congress should (i) end new tax-exempt financing of any generation because the National Energy Policy Act of 1992 rendered generation a competitive market and (ii) prohibit any tax-exempt financing to construct or acquire facilities outside a municipal's or PUD's present service area. Additionally, the tax code should be changed to subject government-owned utilities to the federal unrelated business income tax on the proceeds of any sales they make outside their present service areas. The U.S. Treasury and competition both would benefit from these tax code revisions.

The Rural Utilities Service and OMB should have the statutory option of requiring co-ops unable to re-pay their RUS loans to auction off their assets prior to any RUS loan forgiveness. The government's objective should be to minimize any loss to the Treasury. Going forward, there should be no new RUS loans or other subsidies. The high capital cost of building transmission and distribution lines to serve widely separated customers in rural America have long since been incurred and paid. The job of electrifying America's farms has been completed. There is no justification for continued RUS subsidies. Residence in rural America is no longer synonymous with being poor or needy. (It's worth noting here that investor-owned utilities serve about 60% of the population in areas that would be classified as rural according to the Rural Electrification Act, and, of course, those utilities get no RUS assistance.)

In the future, any government subsidies for electric service should be means tested such that they go to just those low-income citizens who truly need help. The Low Income Home Energy Assistance Program (LIHEAP) is a good model. Whether a citizen needs help turns on his personal financial circumstances; not on who owns the electric wires running into his home.

Federal anti-trust law should be changed to subject government-owned utilities to the same money damages penalties as can be applied to investor-owned companies. Securities laws should also be amended so that government-owned utilities are treated no better than investor-owned companies.

Federal law governing the regulation of transmission also needs to be changed to accommodate competition. For example, as recommended last year by the Pacific Northwest Governors' Regional Review of our region's energy system, Congress should enact legislation subjecting the Bonneville Power Administration's transmission system to FERC regulation equivalent to FERC regulation of investor-owned transmission systems. Then FERC Chair Moler made much the same recommendation with respect to BPA as well as to other federal and municipal transmission systems when she appeared a few weeks ago at one of the Senate Energy Committee's workshops on electric industry restructuring. Finally, as recommended by the Pacific Northwest Governors' Regional Review, Congress should also legislatively divide the Bonneville Power Administration into separate federal transmission and power marketing agencies. Separation legislation should be written in such a manner as to preclude BPA power costs (e.g., WPPSS costs or fish and other environmental costs of the federal hydropower) from being rolled into the general transmission rates paid by BPA transmission customers generally.

7. If Congress enacts comprehensive restructuring legislation, should changes be made to federal, state or local tax codes, and if so why? Please be specific.

See preceding response, as well as our reply to question 2.

8. What, if any, concerns do you have about the reliability of the electric system? If the industry moved to retail competition, will adequate reserves be available? Is the transmission system capable of handling full retail competition?

Those clearly are key questions. We believe they require much more expert analysis and scrutiny by the industry as a whole. Fundamentally, however, the industry's collective ability to maintain and improve system reliability will rest on whether there is the economic capability and incentive to do so. If, for example, today's utility shareholders are treated unfairly with respect to "stranded costs," then investors will be put on notice that investing in utility facilities is a risky proposition. That will affect the cost of capital for transmission (as well as other utility facilities) adversely and to the detriment of reliability.